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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,010	08/21/2003	James M. Leventhal	25739-026	6231
30623	7590	03/09/2005	EXAMINER	
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C. ONE FINANCIAL CENTER BOSTON, MA 02111			NGUYEN, TUAN N	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/645,010

Applicant(s)

LEVENTHAL, JAMES

Examiner

Tuan N. Nguyen

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                         |                                                                             |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)     | Paper No(s)/Mail Date. _____                                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____                                                             | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Specification***

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-6 and 13-27 are rejected under 35 U.S.C. 102(b) as being anticipated by DeVincentis.

In regard to claims 1, 20-23, 26 and 27, DeVincentis discloses a fluid dispensing brush comprising a body defining a first chamber (defined by 20) and a second chamber

Art Unit: 3751

(defined by 38), the body having a plurality of openings (24,26) defined in at least a portion of its outer surface in fluid communication with the first chamber and a plurality of bristles (22) projecting therefrom; a fluid assembly contained in the second chamber, the fluid assembly having an enclosed pressurized reservoir (16) configured to maintain a quantity of fluid under pressure and further having an actuator (42) disposed and configured to discharge a volume of pressure from the pressurized reservoir when actuated such that a volume of fluid is discharged from the pressurized reservoir; and a nozzle (18) contained in the first chamber, the nozzle having one or more holes (52,54) defined in at least a portion of its outer surface in fluid communication with the first chamber, the nozzle being configured and connected to the pressurized reservoir such that the nozzle receives at least a portion of the volume of fluid discharged from the pressurized reservoir and the one or more holes discharge the volume of fluid into the first chamber as one of a fluid spray and a fluid mist, wherein the plurality of openings (24,26) vents the fluid from the brush.

In regard to claims 2, 14 and 19, the body includes a barrel portion (20) defining the first chamber and a circular cylinder handle portion (38) defining the second chamber, wherein the barrel portion is removably connected to the handle portion.

In regard to claims 3-6, 24 and 25, the actuator inherently includes a valve operatively connected to a first end of the pressurized reservoir and configured to discharge pressure from the pressurized reservoir when actuated. The brush further includes a switch (36) disposed in the outer surface, the switch being further disposed and configured to couple with the valve such that movement of the switch from a first

position to a second position actuates the valve. The switch is disposed in the outer surface along the handle portion. The movement of the switch from the first position to the second position includes depressing the switch.

In regard to claims 10 and 12, each of the one or more holes of the nozzle is sized and configured, and wherein the actuator is further configured to discharge the volume of pressure with sufficient force, such that the nozzle discharges the fluid volume of fluid as one of fine fluid droplets, ultra-fine fluid droplets, an atomized fluid spray, and an atomized fluid mist.

In regard to claim 13, the nozzle further includes a hollow elongated tube (see Fig. 1) configured to extend from the first chamber into the second chamber, and further configured to place an interior of the nozzle in fluid communication with the interior of the pressurized reservoir.

In regard to claims 15-17, the barrel portion defines a circular cylinder. The plurality of bristles (22) is distributed along the outer surface of the cylinder such that the plurality of bristles defines a round brush. The plurality of openings (24,26) is distributed along the outer surface of the cylinder such that the fluid vents from a circumferential perimeter of the circular cylinder.

In regard to claim 18, the barrel portion defines a "paddle-shaped conformation" having a first side (the side with holes 24,26) and a second side (there opposite side thereof), wherein the plurality of bristles and the plurality of openings are disposed along at least a portion of the first side.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeVincentis in view of Zenger et al. (hereinafter Zenger).

DeVincentis pressurized reservoir (16) includes a fluid and a gas propellant combine together therein; therefore, a pressurized gas cartridge as claimed is not use by DeVincentis. However, Zenger discloses a pressurized reservoir, within the same area of search, having a fluid that is being pressurized by a pressurized gas cartridge of compressed carbon dioxide gas. In lieu Zenger's teaching, it would have been obvious to one having ordinary skill in the art to produce the DeVincentis pressurized reservoir having a fluid and a pressurized gas cartridge if the user desire to, which would only create more parts and expenses.

7. Claims 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeVincentis.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make each of the DeVincentis one or more holes to have a span of from about 0.4mm to about 1.0mm as claimed, since it has been held that where the

Art Unit: 3751

general conditions of a claim are disclosed in the prior art (see Fig. 2 of DeVincentis), discovering the optimum or workable ranges involves only routine skill in the art.


**Conclusion**

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Battaglia et al., Kan, Thiruppathi, Pyrozyk, Rechelbacher, and Birch et al. disclose other dispensing brushes.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 571-272-4892. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine R. Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Tuan Nguyen  
Primary Examiner  
Art Unit 3751  
3/7/05

TN